

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

INDECK KEYSTONE ENERGY LLC, :
: Plaintiff, :
: :
v. : Civil Action No. 04-325 Erie
: :
VICTORY ENERGY OPERATIONS : Judge Sean J. McLaughlin
LLC, :
: :
Defendant :
: :
: JURY TRIAL DEMANDED

**DEFENDANT'S MOTION IN LIMINE NO. 5 TO BAR PLAINTIFF'S EXPERT
ROBERT SEIBEL FROM OFFERING SPECULATIVE TESTIMONY
REGARDING THE COST TO DEVELOP A NEW BOILER LINE**

Introduction

Defendant Victory Energy Operations LLC ("VEO"), by its undersigned counsel, for its Motion *In Limine* To Bar Plaintiff's Expert, Robert Seibel, From Offering Speculative And Irrelevant Testimony Regarding The Cost To Develop A New Boiler Line, states as follows:

1. Plaintiff's liability expert, Mr. Robert Seibel, worked at IKE's predecessors in interest from 1967 to 1996.

2. In his report dated September 12, 2006, Mr. Seibel makes several statements regarding the cost and feasibility of developing a new line of water tube boilers.

3. As an example, Mr. Seibel states:

To develop a new, acceptable, competitive boiler product the company must perform a comprehensive analysis of existing designs, build an operating prototype of the new boiler and then perform documented performance testing that will demonstrate adequate capability and specified, guaranteed performance. The development of a new design that

will be competitive is a lengthy process. From beginning of the design process to when an acceptable design could be offered for sale could take over a year. Obtaining the rights to a proven design could shortcut the process. Beside the required time, an effort to develop a new line of boilers will incur significant cost – perhaps several times the cost of a prototype. The reality of the boiler industry – which can be said to be mature – is that cost of a new line of boilers is not a good investment.

Seibel Report, attached hereto as Exhibit 1.

4. Mr. Seibel's testimony amounts to nothing more than mere speculation regarding the time, money and effort that VEO may have expended in developing the Keystone® line of boilers. Moreover, allowing Mr. Seibel to testify regarding his unsupported beliefs as to the amount of time and money development of a new boiler line would be prejudicial to VEO and would potentially confuse the jury.

5. Federal Rule of Evidence 403 bars admission of evidence when its probative value is outweighed by its prejudicial impact. FRE 403.

6. Moreover, FRE 702 bars admissibility of expert evidence where the expert's proposed opinions are based on speculation, or are otherwise demonstrably unfair.

7. Mr. Seibel has not demonstrated any reasonable basis for his opinions relating to the development of a new line of water tube boilers.

WHEREFORE, Defendant Victory Energy Operations LLC requests that the Court enter an order barring Mr. Seibel from presenting testimony relating to the time or expense associated with the development of a new line of boilers.

Dated: April 27, 2007

Respectfully submitted,

/s/ Christopher T. Sheean

One of the Attorneys for Defendant,
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MOTION IN LIMINE CERTIFICATE

Christopher T. Sheean, an attorney, certifies pursuant to Local Rule 16.1.4(D), that all parties made a reasonable effort to reach agreement on the issues raised by this motion prior to its filing.

/s/ Christopher T. Sheean

CERTIFICATE OF SERVICE

Christopher T. Sheean, an attorney, certifies that on the 27th day of April, 2007, he caused a copy of the foregoing ***Motion In Limine To Bar Plaintiff's Expert, Robert Seibel, From Offering Speculative And Irrelevant Testimony Regarding The Cost To Develop A New Boiler Line*** to be filed electronically, and that the CM/ECF system for the court will e-mail a copy of the foregoing to the following counsel of record:

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/s/ Christopher T. Sheean
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